



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 1, 2003

Ms. Judith S. Rawls  
First Assistant City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

OR2003-4499

Dear Ms. Rawls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183590.

The City of Port Arthur (the "city") received a written request from an attorney for certain records pertaining to the investigation of the requestor's client. Specifically, the requestor seeks records pertaining to 1) the investigation of any related criminal incident, 2) the investigation conducted by the city police department's internal affairs division, and 3) all related photographs and video tape recordings. You state that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

We note at the outset that you did not submit to this office in a timely manner the written request for records received by the city. Under section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office the records request until June 20, 2003, more than fifteen days after the city's receipt of the records request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). Although you contend that the submitted information is excepted from disclosure under section 552.108 of the Government Code, we conclude that you have not demonstrated a compelling reason under section 552.108 to withhold the requested information. Consequently, we deem your section 552.108 claim waived. However, because you also contend that the requested information is made confidential under other law for purposes of section 552.101 of the Government Code, we will consider your section 552.101 claim.<sup>1</sup>

Section 552.101 encompasses information deemed confidential by statute. You state that the city has adopted chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and a confidential internal file that a police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police officer is subject to disciplinary action under chapter 143, section 143.089(a)(2) requires that all records relating to the investigation and disciplinary action be placed in the officer's civil service file maintained under section 143.089(a). *Abbott v. Corpus Christi*, No. 03-02-00785-CV, slip op., 2003 WL 21241652, at \*7 (Tex. App.—Austin May 30, 2003, no pet. h.). Records maintained as part of an officer's civil service file are subject to release under chapter 552 of the Government Code. See *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 948-49 (Tex. App.—Austin 1993, writ denied); see also Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Such information may be maintained only in the confidential internal police department file.

In this instance, you inform us that the submitted records pertain to an internal affairs investigation that is currently pending and thus has not yet resulted in disciplinary action. We therefore conclude that many of the submitted documents must be maintained in the internal personnel file as contemplated under section 143.089(g) and must be withheld from the public pursuant to section 552.101 of the Government Code. On the other hand, you

---

<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

have also submitted to this office records pertaining to related criminal investigations, *i.e.*, incident reports, use of force reports, and related internal memoranda. Information maintained in the internal police department file is not made confidential under section 143.089(g) unless the information reasonably relates to an officer's employment relationship with the police department. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d at 949; Open Records Decision No. 562 at 7. Consequently, because the requestor has specifically requested all records pertaining to the criminal investigations, we conclude that the city must release the criminal investigation records to the requestor. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) ("Use of Force" reports not type of documents contemplated as confidential under §143.089).

We note, however, that one of the submitted offense reports contain an individual's social security number. Social security numbers are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), but only if the social security numbers were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the city should ensure that this number was not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the city must withhold the submitted internal affairs records in accordance with section 143.089 of the Local Government Code. The submitted records pertaining to criminal matters must be released to the requestor, but the city must redact the social security number contained therein if it is made confidential under federal law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

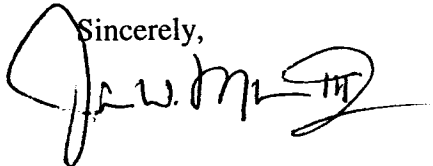
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", written over a horizontal line.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/RWP/sdk

Ref: ID# 183590

Enc: Submitted documents

c: Mr. Thomas J. Burbank  
Burbank & Hamm  
3560 Delaware, Suite 311  
Beaumont, Texas 77706  
(w/o enclosures)